

Remarks

Claims 39, 40, 43-45, 47, 63-72 and 75-95 are pending in the application. Claims 39, 43, 75, 77, 79 and 80 are currently amended. New claims 87-95 are added. Claims 1-38, 41-42, 46 and 48-62 and 73-74 have been canceled. Entry of all the above Amendments to the Claims and favorable reconsideration are requested.

The Amendments

Claim 39 has been amended to specify that the polymeric film (A) is oriented in the machine direction only at a stretch ratio of about 4:1 to 9:1 and that the film has a tensile modulus in the cross direction that is less than about 0.75 times the tensile modulus in the machine direction. Support for the amendment of orienting the film in the machine direction only is found in dependent claim 73 which has now been canceled. Support for the amendment of a stretch ratio of about 4:1 to 9:1 is found on page 26, lines 10-11 for combining range and ratio limits and on page 20, lines 22-23 for the 4:1 to 9:1 stretch ratio. Support for the film having a larger tensile modulus in the machine direction than the cross direction is found on page 29, lines 24-28.

Claims 43 and 75 have been amended to correct an inadvertent error regarding the melt flow rate. Claim 77 has been amended to correct an inadvertent and obvious grammatical error regarding the skin layer being different from the base layer in composition. Claims 79 and 80 have been amended to correct obvious errors

New claims 87 and 88 depend from claim 39 while new claims 89 and 90 depend from claim 43. Claims 87-90 are supported at page 21, lines 13-15 and page 22, lines 11-16

New claim 91 is dependent from allowed claim 77 and further defines the labelstock comprising a second skin layer. Support for this amendment is found in the specification such as in Figs. 3 and 5 and on page 23, line 11 to page 24, line 2.

New claim 92 is dependent from claim 91 and defines the composition of the second skin layer is different from the composition of the first skin layer. Support for this amendment is found in the specification and in original claim 38.

New claims 93-94 are supported in the specification such as on page 21, lines 13-15. Support for new claim 95 is found on page 29, lines 3-6.

Allowed Claims

Applicant gratefully acknowledges the allowance of claims 43, 44, 47 and 75-86. New claims 89-90 which are dependent from allowed claim 43, and new claims 91-95 which are dependent from allowed claim 77 should also be allowed.

Rejections

I. Claims 39, 40, 45 and 63-73 have been rejected under 35 USC §103(a) as being unpatentable over Fujii et al. (US5026778).

Fujii et al. teaches single layered and multilayered structures containing a polypropylene and a polyethylene blend. The Examiner has acknowledged that Fujii et al. do not disclose or suggest adhesives. Fujii et al. do not disclose or suggest a structure that is suitable or useful for labeling an article such as a bottle container. Consequently, Fujii et al. do not disclose or suggest the structure of the present invention which is an adhesive labelstock.

Reconsideration of the rejection of the claims is respectfully requested in view of the above amendments to the claims and the remarks which follow. The rejected claims are directed to adhesive containing labelstocks for use in adhesive labels. The adhesive labelstocks comprise a film layer and an adhesive layer adhesively joined to the lower surface of the film.

Applicants respectfully submit that the present claims are not obvious over Fujii et al. In particular, as acknowledged by the Examiner there is no teaching or suggestion in Fujii et al of the use of an adhesive layer adhesively joined to the sheets. The Examiner, however, has suggested that the addition of an adhesive layer to either bond the films to another structure or to close the container would be well within the ordinary skill in the art. Reconsideration of this rejection is requested since there is no teaching in Fujii et al which would suggest to or motivate one skilled in the art to add an adhesive layer to the sheets. It is not surprising that Fujii et al do not discuss the use of

adhesives since Fujii et al are describing a resin composition and a process for preparing sheets which can be molded and shaped to form various containers.

Reconsideration of the rejection is requested since Fujii et al do not teach or suggest adding an adhesive layer to the sheets described therein, and the Examiner has not cited any prior art that would suggest adding an adhesive to the films of the type described by Fujii for any purpose. The Examiner has stated on page 4 of the final rejection mailed from the Patent Office on July 28, 2005:

Regarding the use of adhesive layers, the Applicants use the term "adhesive layer" generically. The Examiner takes the position that Applicants are relying upon the common knowledge in the art since a generic term is used. It is clear that one working in the art, even those of less than ordinary skill in the art, would be well versed in the use of adhesive layers.

Applicant respectfully submits that although "adhesive layers" are known to those skilled in the art, the issue, with respect to a rejection under 35 USC §103, is whether it would have been obvious to one of skill in the art to add an adhesive layer to the films described by Fujii et al. Applicant submits that the addition of an adhesive layer to Fujii et al is not obvious based on the disclosure of Fujii, and the Examiner has cited no art that would have made it obvious to one skilled in the art or motivate one skilled in the art to prepare an adhesive containing labelstock as presently claimed, based upon the disclosure of Fujii et al.

It is well established that the suggestion of adding an adhesive cannot be based on Applicant's specification. In re Lee, 277 F.3d 1338, 1343, 61 USPQ 2d 1430 (Fed. Cir. 2002).

The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Gordon, 733 F.2d. 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Moreover, independent claim 39 (and the claims dependent therefrom) has been amended to recite that the film is "oriented in the machine direction only at a stretch

ratio of about 4:1 to about 9:1". Although Fujii et al have briefly mentioned that the films described therein may be drawn, and the drawing may be conducted by uniaxial orientation or biaxial orientation, (column 7, lines 59-60) there is no teaching or suggestion of a stretch ratio, and more particularly, there is no teaching or suggestion of a machine direction only stretch ratio of from about 4:1 to about 9:1. Accordingly, Applicant submits that the above rejected claims, as amended, are not obvious over Fujii et al and the rejection should be withdrawn.

Moreover, there is no teaching or suggestion in Fujii of a film that has a tensile modulus in the cross direction that is less than 0.75 times the tensile modulus in the machine direction. There is no teaching in Fujii et al that would motivate one skilled in the art to prepare such a film and combine the film with an adhesive layer. For these additional reasons, the rejection should be withdrawn.

New claims 87 and 88 which are dependent from claim 39 also are not obvious over Fujii et al. Fujii et al do not teach or suggest a labelstock wherein the adhesive layer is a heat activated or a hot melt adhesive, nor does Fujii et al suggest or motivate one skilled in the art to prepare an in-mold label.

II. Claims 39, 40, 45 and 63-73 have been rejected under 35 USC §103(a) as being unpatentable over Kozimor et al U.S. 6,231,936.

Kozimor et al teach blends of polypropylene, metallocene catalyzed polyethylene and nucleating agents which are radiation tolerant, and articles prepared from such blends. The Examiner has suggested:

"These blends are used to produce uniaxially oriented films.
(Page 3).

Since these structures are used for various applications, it would have been obvious to one of ordinary skill in the art to have used adhesives where necessary. (Page 4).

Regarding the use of adhesive layers, the applicants use of the term "adhesive layer" generically. The Examiner takes the position that Applicants are relying upon the common knowledge in the art since such a generic term is used. It is

clear that one working in the art, even those of less than ordinary skill in the art, would be well versed in the use of adhesive layers (Page 5).

Reconsideration and withdrawal of this rejection as applied to the amended claims is solicited. The only discussion of a multilayer structure found in Kozimor is in column 8, line 13 where Kozimor states that useful "devices include food packaging material comprising film and a self supporting multilayer structure which includes: (1) metal foil, (2) cellulosic material, (3) opaque plastic film, or combinations thereof". Applicant has not been able to find any disclosure or suggestion in Kozimor et al of articles comprising films prepared from the radiation tolerant polypropylene and an adhesive.

The rejection of the pending claims directed to adhesive-containing labelstock as being obvious because "it would have been obvious to one of ordinary skill in the art to have used adhesives where necessary" finds no support in Kozimor et al. While the Examiner is correct in indicating that Kozimor's structures can be used for various applications, those applications discussed in detail in column 8, line 14 through column 9, line 27 include articles and devices which include food packaging materials, medical devices, lab ware bottles for culture growth, liquid storage containers such as bags, pouches and bottles, etc. Kozimor et al describes that the devices may be made or formed by any useful forming means. Column 4, lines 11-21.

There is no disclosure in Kozimor et al of the use of an adhesive layer in combination with the articles and devices, and it is respectfully submitted that Kozimor et al have not described any application wherein one skilled in the art would normally use adhesive layers. More particularly, there is no suggestion of utilizing the radiation tolerant polypropylene compositions (either monolayer or multilayer) for preparing adhesive containing labelstocks for use in preparing adhesive labels.

Moreover, with regard to the rejected and amended claims, there is no teaching or suggestion in Kozimor of a monolayer or multilayer film oriented in the machine direction only at a stretch ratio of from about 4:1 to about 9:1 and having a tensile modulus in the cross direction that is less than 0.75 times the tensile modulus of the film

in the machine direction. The rejection of the above claims should be withdrawn. New claims 87 and 88 which are dependent from amended claim 39 also should be allowed.


Conclusion

In view of the above comments and the amendments to the claims, Applicant respectfully submits that all of the claims pending in the application are allowable over the prior art. In particular, claims 39, 40, 45 and 63-72 of the present application are not obvious over Fujii et al or Kozimor et al. An early action allowing all of the claims is solicited.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 18-0988 under Attorney Docket No. **AVERP3302USB**.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

By 
Heidi A. Boehlefeld
Reg. No. 34,296

1621 Euclid Avenue
Nineteenth Floor
Cleveland, Ohio 44115
(216) 621-1113